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DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In re Application of:

Togashi et al

Application No. 09/518,729

Filed: March 3, 2000

For: **DISC CHANGER**

DECISION
ON PETITION

This petition filed May 7, 2003 is a request for reconsideration for the denial of the petition filed July 16, 2002 to withdraw the holding of abandonment for the above-identified application. The request is being treated pursuant to 37 CFR § 1.181(a). No fee is required.

The Notice of Abandonment was mailed June 27, 2002 for failure to pay the issue fee in response to the Notice of Allowance and Issue Fee Due mailed February 11, 2002.

Petitioner alleges that the Notice of Allowance was not received.

Based on MPEP § 711.03(c) [*See also Notice entitled Withdrawing the Holding of Abandonment When Office Actions Are Not received, 1156 O.G. 53 (November 16, 1993)*], in absence of any irregularity in the mailing of an Office action, there is a strong presumption that the Office action was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. The showing required to establish the failure to receive an Office communication must include:

- (a) a statement from the practitioner stating that the Office communication was not received by the practitioner;
- (b) a statement attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received; and
- (c) a copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

The showing may not be sufficient if there are circumstances that point to a conclusion that the Office communication may have been lost after receipt rather than a conclusion that the Office communication was lost in the mail.

The first petition was denied because the petition provided a showing establishing non-receipt of the Notice of Allowance at the present address (above), and not the address of record at the time of mailing of the Notice of Allowance.

Petitioner submits a copy of an e-mail dated May 31, 2001, which allegedly changes the address for the instant case. Petitioner argues that since the address was changed via e-mail prior to the mailing of the Notice of Allowance, the holding of abandonment should be withdrawn.

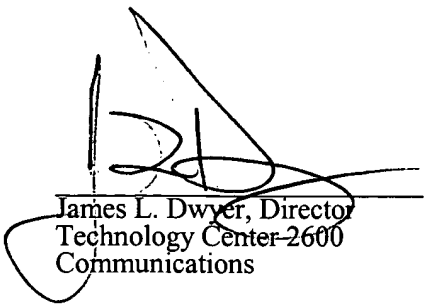
Since Applicant changed the address via e-mail on May 31, 2001 prior to the mailing of the Notice of Allowance on February 11, 2002, it is concluded that the Notice of Allowance was sent to the wrong address. The Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

For the above stated reasons, the petition is **GRANTED**.

The Notice of Allowance is hereby vacated. A Notice of Allowability was mailed along with the Notice of Allowance on February 11, 2002. Since it has been established that the Notice of Allowance was not

received, it is presumed that Petitioner also failed to receive the Notice of Allowability.

The application file is being forwarded to the Technology Center's technical support staff for issuing a new Notice of Allowance and Issue Fee Due and Notice of Allowability. The period for response will be reset to run from the mailing date thereof. From there, the application file will be forwarded to the Issue Branch for further processing.



James L. Dwyer, Director
Technology Center-2600
Communications